

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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BOURNE CO.,

Plaintiff, No. 07 Civ 8580 (DAB)

-vs-

TWENTIETH CENTURY FOX FILM

CORPORATION, FOX BROADCASTING

COMPANY, TWENTIETH CENTURY FOX

TELEVISION, INC., TWENTIETH

CENTURY FOX HOME ENTERTAINMENT,

INC., FUZZY DOOR PRODUCTIONS, INC.

THE CARTOON NETWORK, SETH

MACFARLANE, WALTER MURPHY,

Defendants.

-----X

VIDEOTAPED DEPOSITION OF SANDRA WILBUR

New York, New York

March 19, 2008

Reported by:

Bonnie Pruszynski, RMR

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1 S. Wilbur
2 music -- well, strike that.
3 Do you recall how many hours in total
4 you spent to prepare this report?
5 A I don't recall.
6 Q I'm sorry. You need to be verbal.
7 A I don't recall. I'm sorry.
8 Q Did you submit an invoice to Moses
9 and Singer for your services?
10 A I did.
11 Q And were your services billed by the
12 hour?
13 A They were billed by the hour.
14 Q And did your invoice include the time
15 you spent creating report?
16 A It did.
17 Q But you don't recall as you sit here
18 today how many hours that was?
19 A I put in a lot more hours than what I
20 billed for, actually.
21 Q Okay. Any estimate at all?
22 A Probably 25 hours.
23 Q Your report states that there are
24 times when --
25 A I'm sorry. That's what I billed for.

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1 S. Wilbur
2 If you are asking what I actually spent --
3 Q Um-hum.
4 A -- I spent more than that. I just
5 don't know offhand.
6 Q Okay. To go back, your report
7 mentions that at times you may have as many as
8 five consultation or litigation matters happening
9 at the same time.
10 A Right.
11 Q Is that correct?
12 A Right.
13 Q Was that true during the preparation
14 of this report?
15 A There was another, another case I was
16 working on at the same time, yes.
17 Q And is that case in federal court?
18 A No.
19 MS. STARK: Objection. I don't see
20 how this is relevant.
21 MR. RIMOKH: You have stated your
22 objection.
23 MS. STARK: You can answer.
24 A What was your question?
25 Q Was that a litigation matter?

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1 S. Wilbur
2 A It was a --
3 MS. STARK: I think your question
4 was, was it in federal court.
5 Q Strike that.
6 And the question is: Was it a
7 litigation matter?
8 A The answer is no.
9 Q Can you briefly tell me what that
10 was?
11 MS. STARK: Objection.
12 A I keep all of the work I do very
13 confidential, and this is one of the cases that I
14 would also keep confidential, as you would want me
15 to do if it were your case.
16 Q This transcript could be marked
17 confidential, but that is okay.
18 What is a musical hook?
19 A The memorable part of a song.
20 Q And does "When You Wish Upon a Star"
21 contain a musical hook?
22 A It does.
23 Q And if you could look at Exhibit I,
24 which is the transcription. Can you show me or
25 point out to me on that exhibit what it is you

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1 S. Wilbur
2 consider to be the musical hook of "When You Wish
3 Upon a Star"?
4 A I would say the seven note phrase.
5 Q Which is?
6 A "When you wish upon a star."
7 Q So, it's that first seven note
8 phrase --
9 A Right.
10 Q -- in your transcription?
11 Now, does "I Need a Jew" copy the
12 entire musical hook from "When You Wish Upon a
13 Star"?
14 A It copies the first four notes of the
15 seven.
16 Q How about the last three notes?
17 A It does not copy the last three
18 notes.
19 Q What is "ethnomusicology"?
20 A The study of music in culture, to put
21 it into a context, so that it gives the study of
22 music, how it works in culture, how it is handled
23 in different cultures. So it's a little bit of
24 sociology, a little bit of psychology, and a
25 little bit of anthropology in connection with

1 (Pages 50 to 53)

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1 S. Wilbur
2 correct?
3 A Those first two bars.
4 Q And what would you refer to as the
5 second phrase in "When You Wish Upon a Star"?
6 A "Makes no difference who you are."
7 Q So, it's, again, those two more bars?
8 A Right.
9 Q And if you look at bar three, which
0 is the first bar of the second phrase; correct?
1 A Correct.
2 Q What is the interval between the
3 second note and the third note in "Wish Upon a
4 Star"?
5 A Between the note that is over "no"
6 and "if"?
7 Q Exactly.
8 A That is a whole step.
9 Q And what is the interval between the
0 third note and the fourth note in "Wish Upon a
1 Star"?
2 A That is a whole note -- a whole step.
3 Q Going down now to, "I Need a Jew,"
4 what is the interval between the second note and
5 the third note?

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1 S. Wilbur
2 A A whole step.
3 Q And that is the notes on top of "I'll
4 wish"?
5 A Correct.
6 Q And what is the interval between the
7 third note and the fourth note in "I Need a Jew"?
8 A That is a half step.
9 And if you had read the entire
0 sentence in my report, you would have understood
1 what I was referring to.
2 Q What were you referring to?
3 A Let me go back to that, so I can be
4 are very clear with you as to what I was saying.
5 Okay. That's, I think, page four,
6 number four, "the intervallic pattern of the first
7 four notes of the second phrase, ascending octave
8 followed by descending whole step and half step,
9 is identical and the notes are parallel to the
0 first four notes in the chorus of "When You Wish
1 Upon a Star", when you wish u-."
2 So, what I am saying is that the
3 intervals in that third measure are identical to
4 the intervals of the first measure in both songs,
5 and that is what I say pretty clearly there. I am

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1 S. Wilbur
2 not comparing it one to the other, one above the
3 other; I am comparing to it the first and opening
4 four notes.
5 Do you see what I am talking about?
6 Q Okay. So, what you intended, if I
7 may, is the intervallic pattern of the first four
8 notes of the second phrase, (ascending octave
9 followed by descending whole step and half step is
10 identical).
11 And then if we would remove, "and the
12 notes are parallel for a moment," what you mean to
13 say is that is identical to the first four notes
14 in the chorus of "When You Wish Upon a Star"?
15 A Yes, that relationship.
16 Q Okay. So, it was -- okay, so you
17 were not intending to compare --
18 A No.
19 Q -- the intervallic relationship
20 between the third bar of each song?
21 A No. I thought it made it clear, and
22 I apologize if I did not.
23 Q What is the significance of the
24 intervallic pattern of the first four notes of the
25 second phrase being identical with the first?

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1 S. Wilbur
2 A Again, I think that it shows the
3 same -- the use of those, that strikingly similar,
4 obvious first four notes of the hook, using those
5 same intervals again in the second, in the second
6 case.
7 Q Okay. So, just --
8 A So, basically, what I am saying is
9 that it is important that they use the same
10 relationship again. It reinforces the hook the
11 second time.
12 Q But the intervallic pattern in the
13 third bar, between the third and fourth note in
14 "Wish Upon a Star" is different than that --
15 A Right, that's correct.
16 Q -- than that in the third one, it is
17 different?
18 A Because they use a different harmony
19 pattern starting in the second half of measure
20 two, so it's going in a different place. If you
21 look at the chords, you will see the G, D minor
22 and the G sharp diminish cord in I Need A Jew is
23 different than the G minor 7th and the G seventh.
24 So, it's a different way of putting that pattern
25 harmonically into the piece in a different way,

3 (Pages 66 to 69)

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1 S. Wilbur
 2 episode that I transcribed.
 3 Q And how did you create this
 4 transcription for "I Need a Jew"?
 5 MS. STARK: Objection.
 6 A I already told you.
 7 Q I'm sorry. You can answer.
 8 A I made an audio file of the music in
 9 the episode, and I -- and I listened to it, and I
 10 determined what the chords were and what the
 11 melody was, and I wrote it down. And then I had my
 12 assistant put it into some music notation software
 13 so that it could be printed out.
 14 Q Thereafter, did you confirm that it
 15 was correct?
 16 A Yes, I did.
 17 Q Looking at Exhibit F of your report,
 18 can you tell me what that first page is?
 19 A This is a leadsheet of "I Need a
 20 Jew," which is different from the one that was
 21 performed.
 22 Q Okay. And that bears document number
 23 on the bottom Murphy 00001; correct?
 24 A Correct.
 25 Q And then if you look at Exhibit G to

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1 S. Wilbur
 2 your reports, which contains documents marked
 3 Murphy 2 to Murphy 15, and I would ask what is
 4 that document.
 5 A This is the score of what was on that
 6 episode, including the melody. Actually, there is
 7 a page that is reversed in here.
 8 Q Yes. I will note that.
 9 A Okay.
 10 Q It's 15 and 14 should be switched.
 11 A Correct. But this is, this is the
 12 piano chords, and melody along with notation for
 13 the other instruments that were playing on the
 14 track.
 15 Q Did you have exhibits -- excuse me.
 16 Did you have Exhibit F, what you
 17 identify as a leadsheet, when you transcribed "I
 18 Need a Jew"?
 19 A No.
 20 Q Did you have exhibit G when you
 21 transcribed --
 22 A No.
 23 Q -- your final transcription?
 24 A No.
 25 Q Did you alter your transcription in

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1 S. Wilbur
 2 any way based on these two documents?
 3 A I actually -- I actually changed, I
 4 think, one of the chords in the, what I call the B
 5 section, because I felt that the score more
 6 accurately described it. But I think it was just
 7 one chord.
 8 Q Yes. Let's look at Exhibit I -- and,
 9 I am sorry, what do you consider the B section?
 10 A The B section. "Fate is kind." And I
 11 think -- I have to see.
 12 Q We are looking at "I Need a Jew," so
 13 it's, "where to find," is that what you mean?
 14 A "Where to find," I'm sorry, yes.
 15 Q Okay.
 16 A If my memory serves me, it's the E
 17 flat diminished 7, that I thought was -- was
 18 better stated than my transcription, but I think
 19 that was the only change.
 20 Q And bar 21; is that correct?
 21 A No. It's in bar 18.
 22 Q Sorry.
 23 Any the other changes?
 24 A No, I don't believe so.
 25 There were certainly -- there are

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1 S. Wilbur
 2 differences between my transcription and his, but
 3 I didn't feel that there were any big mistakes.
 4 Q When you say "his," who is his?
 5 A I meant Murphy. I believe my chords
 6 are slightly different in some places, but I
 7 didn't think that it was significant, so -- and I
 8 wasn't using his score to correct mine.
 9 Q When you say his score, is it your
 10 understanding that Mr. Murphy created this score?
 11 A I don't know who created it. I have
 12 no idea who created it.
 13 Q Okay. Let's look at the first page
 14 of Exhibit G, which is it okay if we call it "the
 15 score"?
 16 A Sure.
 17 Q And if you look at, towards the
 18 middle on the left-hand side, there is the
 19 indication PNO. What does that stand for?
 20 A Where are you?
 21 Q I'm sorry. On the left-hand side,
 22 the very outside. Yes, exactly?
 23 A PNO, piano.
 24 Q What is that intended to represent?
 25 A These are the chords. I did not --

2 (Pages 82 to 85)

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1 S. Wilbur
 2 what I did, in terms of trying to determine what
 3 the chords were, I transcribed out what the piano
 4 what actually playing.
 5 Q I'm sorry.
 6 A I transcribed out what the piano was
 7 playing in the A section, that first part, so I
 8 could be sure that I was hearing correctly what
 9 the notes were.
 10 Q And in the first three bars, there
 11 are notes; correct?
 12 A Right.
 13 Q On the piano section?
 14 A Right.
 15 Q And is that the melody?
 16 A That is an introduction.
 17 Q Okay. And then moving on to bars
 18 four, five, through nine, 10 through 14, for
 19 example, what is the notation in the piano section
 20 there?
 21 A Chords.
 22 Q What does --
 23 A Well, what it's doing is that the
 24 notation there is simply indicating that those
 25 chords change on every half note. So, it changes,

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1 S. Wilbur
 2 it, the chord plays in the beginning of the
 3 measure and then in the middle of the measure on
 4 the third beat in the first one.
 5 Let me see if there is any change, in
 6 measures, for instance, seven, that is a whole
 7 note; that means that the chord is held through
 8 the whole bar.
 9 So the harmonic rhythm, if you will,
 10 is stated in that part, so that if you have, for
 11 instance, measure five and six --
 12 Q Yes.
 13 A -- the chord plays on the first beat
 14 and the second chord plays on the third beat and
 15 it is held through for those two beats in both
 16 cases. In measure seven, the chord is held for a
 17 whole note. In measure ten, you have the C over G
 18 is held for two beats, and then it changes, the
 19 chord changes on the third beat, which is the D
 20 minor seventh over G, and on the fourth beat it
 21 changes to a G7 flat, I believe, if I can read
 22 that correctly.
 23 Q In those same bars that you just
 24 referenced is the melody for the piano set forth?
 25 MS. STARK: Objection, form.

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1 S. Wilbur
 2 A The melody for the piano?
 3 Q Is the melody for the piano notated?
 4 A No.
 5 Q Do you know why not?
 6 MS. STARK: Objection. This is not
 7 her document.
 8 A I didn't do this.
 9 Q She is an expert. She can testify.
 10 A Basically, it's very simple.
 11 The chords are here. They are
 12 indicated. How the piano player plays those
 13 chords, whether in chords or broken arpeggios or
 14 in other ways is left open.
 15 Q What is that symbol that is, for
 16 example, in -- there is two of them in bar five,
 17 it appears to me, and correct me if I am wrong,
 18 but it's a diamond shape with a line coming down.
 19 What does that indicate?
 20 A That is just showing harmonic rhythm.
 21 It's just showing the rhythm of the chord. It's
 22 just saying that the chord is held for two beats.
 23 Q Look at page one of your report. In
 24 that first sentence, in summary of findings, which
 25 is seconds two A, it states: "Based on my

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1 S. Wilbur
 2 analysis, as discussed below, I have concluded
 3 that "I Need a Jew" is extremely similar to "When
 4 You Wish Upon a Star," incorporate large amounts
 5 of the creative expression in "When You Wish Upon
 6 a Star," and was obviously derived from "When You
 7 Wish Upon a Star."
 8 Is that your opinion?
 9 A That is.
 10 Q Do you believe that "I Need a Jew"
 11 can serve as a substitute for "When You Wish Upon
 12 a Star"?
 13 MS. STARK: Objection. Outside the
 14 scope of her report. You can answer.
 15 A Can substitute, in terms of you mean
 16 having this song put in the Pinocchio movie, is
 17 that what you mean?
 18 Q That is one example.
 19 A No.
 20 Q Okay. Do you ever consult with
 21 companies regarding music to insert either in a
 22 commercial or in a motion picture?
 23 A Many times. All the time. Every
 24 day.
 25 MS. STARK: Objection. This is

23 (Pages 86 to 89)

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1 S. Wilbur
 2 beyond the scope of Ms. Wilbur's report.
 3 MR. RIMOKH: Really. I would point
 4 you to her qualification section.
 5 MS. STARK: That is fine. You can
 6 ask her about her consulting, but --
 7 BY MR. RIMOKH:
 8 Q Anyway, in your role as the
 9 consultant, if one of your clients wanted to use
 10 "Wish Upon a Star" in a motion picture, would you
 11 accept the song "I Need a Jew" as a substitute for
 12 it?
 13 MS. STARK: Objection. You can
 14 answer.
 15 A It wouldn't happen.
 16 Q Why wouldn't it happen?
 17 MS. STARK: Objection. You can
 18 answer.
 19 A It's not the same.
 20 Q Okay. On page five of your report,
 21 item number ten, you state, "the basic chord that
 22 begins and ends each four-measure section is the
 23 same."
 24 What did you mean by that?
 25 A If you look at -- okay. What I said

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1 S. Wilbur
 2 is that you have four measures -- on the first
 3 line?
 4 Q Yes. I'm sorry. We are looking at
 5 Exhibit I again?
 6 A Correct.
 7 Q One second, let me get there.
 8 Okay. Go ahead.
 9 A And the first chord is C in both?
 10 Q Okay.
 11 A The last chord of the four measures
 12 is C in the top and C over E, which simply means
 13 it's a C chord with an E in the base in the first
 14 version.
 15 Q Pardon me. What word is that listed
 16 or linked up to, so I can find my place?
 17 A It's on R, C in the --
 18 Q Is that the beginning or the end?
 19 A I'm sorry. Let me start again.
 20 Q Sure.
 21 A When and no-, no- as in nothing,
 22 there is a C chord in both.
 23 Q Got it.
 24 A If you look at the end of the line,
 25 who you are, above are is a C chord.

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1 S. Wilbur
 2 Q Are you saying in both it's a C
 3 chord?
 4 A It's a C chord in both. It's a C
 5 over E in the base, which is basically a C chord
 6 with the E in the base, which is simply a C chord
 7 in first inversion. So that is the same basic
 8 chord.
 9 In measure five, between one on the
 10 bottom and N as in anything, there is, again, a C
 11 over E in the top.
 12 Q In "Wish Upon a Star"?
 13 A In "Wish Upon a Star."
 14 And in "I Need a Jew", it's C in the
 15 bottom.
 16 Q And you are saying those are the
 17 same?
 18 A Those are the same.
 19 Q Okay. If you look at measure eight,
 20 where you have the word "you" in "When You Wish
 21 Upon A Star," and "Jew" --
 22 Q Yes.
 23 A -- in "I Need a Jew."
 24 Q Um-hum.
 25 A You have the C chord in the beginning

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1 S. Wilbur
 2 of that measure, and you end with a G7 chord.
 3 In the next measure, nine --
 4 Q Um-hum.
 5 A -- you start with a C chord in
 6 both --
 7 Q Um-hum.
 8 A -- on the first word. And if you go
 9 four measures out, you end in the same way, in
 10 measure 12 as you did in measure four.
 11 Q On C, is that what you are saying?
 12 A C, on the second syllable of extreme,
 13 and again in the -- in the "I Need A Jew", it's a
 14 C over E.
 15 Q Stop for one second. Just as a
 16 matter of notation, you have just referenced that
 17 in bar 12, it ends in a C chord. Is there a
 18 reason that you don't place a C over the "I Need a
 19 Jew" song?
 20 A That -- there is a reason, because
 21 the C over E is held for the whole bar. So that
 22 it starts earlier, but it's playing during that
 23 entire bar.
 24 Q It's still there at that end note?
 25 A Right, same note.

1 (Pages 90 to 93)

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1 S. Wilbur
 2 A Correct.
 3 Q Any other instances?
 4 A Again, not that I am aware of. I
 5 certainly admit to them, if I have made a mistake.
 6 Q Okay.
 7 A It doesn't change anything, for sure,
 8 but --
 9 Q All right. So, in, on page five of
 10 your report, item nine, you state, "the melodic
 11 rhythm is nearly identical throughout the whole
 12 song."
 13 A I would like to clarify that.
 14 Q Sure.
 15 A The melodic rhythm is nearly
 16 identical throughout the whole song. The sheet
 17 music, the melodic rhythm is nearly identical
 18 throughout the whole song "I Need a Jew," as
 19 compared to the sheet music, and there are
 20 distinguishing similarities -- I'm winging this,
 21 distinguishing similarities to the CE arrangement
 22 of the song in terms of some of the elasticity,
 23 some of the slowing down and speeding up.
 24 Certainly, the last two notes in the two measures
 25 are the same.

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1 S. Wilbur
 2 So, you can see that he is
 3 referencing that arrangement in terms of the way
 4 he slows down and speeds up in the piece. It's
 5 not nearly to the extent that you find in the
 6 "When You Wish Upon a Star" in the Pinocchio film,
 7 which is much more elastic in terms of the slowing
 8 down and speeding up, but there is that element in
 9 common.
 10 Q Okay. Going back to Exhibit
 11 I -- again, bear with me.
 12 (DVD playing.)
 13 Q So, obviously I want you to listen to
 14 the song as it's playing. You can ignore what she
 15 is saying. I went a little too far.
 16 Okay. As we just heard are there is
 17 some music playing before he says nothing; is that
 18 correct?
 19 A Right.
 20 Q Is that music present in your
 21 transcription of "I Need A Jew"?
 22 A No.
 23 Q Is there a reason why it's not?
 24 A It simply wasn't. I didn't view it
 25 as important. In all the arrangements that I have

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1 S. Wilbur
 2 heard of these songs, they are all -- the
 3 introductions are all very different, and it's
 4 part of the arrangement, and it wasn't at issue.
 5 Q So, is the introduction substantially
 6 similar to anything in "When You Wish Upon a
 7 Star"?
 8 A Probably not.
 9 MS. STARK: Objection.
 10 A I don't believe so. If it were, I
 11 would have put it in.
 12 Q Okay.
 13 (DVD playing.)
 14 MR. RIMOKH: I'm sorry. Can you
 15 transcribe what he's saying at this point
 16 now?
 17 I'm going to go back just a little
 18 bit and I would like to you to transcribe
 19 the lyrics to give some context, so I am
 20 going to go back one second.
 21 (DVD playing: "I Need a Jew.")
 22 VOICE SINGING: "Where to find, a
 23 Baum or Stein or Stein, to teach me how to
 24 whine and do my taxes.
 25 (Music playing.)

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1 S. Wilbur
 2 BY MR. RIMOKH:
 3 Q Is it correct, Ms. Wilbur that after
 4 the character, Peter, sung "taxes," there was a
 5 section that was playing where there was music but
 6 no vocals; is that correct?
 7 A Correct.
 8 Q Would you call that an interlude?
 9 A I would.
 10 Q Is that musical interlude notated in
 11 your transcription of "I Need a Jew"?
 12 A It is not, because it's not related.
 13 Q What does "not related" mean?
 14 A The music that is being used there
 15 doesn't refer really back to the song or any of
 16 the chords. It's developing in a different way.
 17 As in contrast to, if you listen to
 18 the Pinocchio, and you listen to where it is in
 19 the film, and then you keep going after it's been
 20 notated here, you will find that the development
 21 of the instrumental portion of that is very much
 22 related and develops from the mode piece and the
 23 hooks, if you will, of what happened before. This
 24 is different. It's simply underscoring.
 25 Q Do you consider, would it consider it

27 (Pages 102 to 105)

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1 S. Wilbur
2 a part of the song "I Need a Jew"?
3 A Absolutely not.
4 Q Why not?
5 A You can see what it is. It's
6 underscoring the picture. It happens all the
7 time. I mean, it's -- I didn't hear anything in
8 that musical interlude that used any of the
9 melodic material that came before it.
10 Q You mean, from "I Need a Jew"?
11 A Exactly.
12 Q From the song before it?
13 A Right. So, that is a completely
14 different, unrelated piece of music. Obviously,
15 the instruments are playing it, and it's being
16 used, and they put drums in and stuff like that,
17 but it's really not related to the song. I chose
18 to only write down what was at issue, which were
19 the parts of the songs that were similar.
20 So, this is not related to the song.
21 Q So, you didn't address differences?
22 A Oh, of course I did. But I'm
23 concentrating. Part of the methodology is to look
24 at those things that are similar, and identify
25 those things, and then see to what degree they are

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1 S. Wilbur
2 A So, that would be a kind of way of
3 categorizing it.
4 Q What is the -- if there is, a
5 musicological definition of "interlude"?
6 A Well, I think it could have lots of
7 different meanings. In this particular case, it's
8 background music for underscoring. It's clearly
9 scoring the picture.
10 If he had developed thematically any
11 of the melodic or other material that came before
12 it, then I would say it was related, but he did
13 not. So, it's not.
14 Q Okay.
15 (DVD playing.)
16 VOICE SINGING: "Though by many
17 they're abhorred, Hebrew people I have
18 adored. Even though they killed my Lord, I
19 need a Jew."
20 MR. RIMOKH: You can keep
21 transcribing.
22 MALE VOICE: "My name is Max
23 Weinstein. My car just broke down. May I
24 use your phone?
25

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1 S. Wilbur
2 similar, and that is what I did.
3 Q I'm going to go back for a second.
4 MS. STARK: I'm going to shut this.
5 Thank you.
6 MR. RIMOKH: It is shut, believe it
7 or not. We get that all the time.
8 MS. STARK: I just thought it was
9 still open.
10 BY MR. RIMOKH:
11 Q If you look at Exhibit G, which I
12 believe that we have been referring to as the
13 score?
14 A Um-hum.
15 Q Do you know if this musical interlude
16 we just heard is notated in the score?
17 A It is.
18 Q Can you show me where? Where it
19 starts?
20 A It starts on page 00008, and it is
21 entitled 1M6-A entitled "interlude."
22 Q I'm sorry. Where do you see that?
23 A I see on it the very top of the page,
24 where it says "interlude"?
25 Q Got you.

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1 S. Wilbur
2 VOICE SINGING: "Now my troubles are
3 all through. I have a Jew."
4 MALE VOICE: "Hey."
5 BY MR. RIMOKH:
6 Q Okay. So we just heard an ending
7 piece starting with, I believe, "now my troubles
8 are all through." Is that correct?
9 A Correct.
10 Q Is that portion or is that music
11 represented on your transcription of "I Need a
12 Jew"?
13 A No. No, it isn't. I didn't feel,
14 you know -- actually, it's more song. So it's
15 actually taking the song and making it more of --
16 more of the same.
17 So, I certainly could have used it, I
18 just viewed it as a repeat melodically of the
19 previous four measures at the end of the piece.
20 But, again, that was a judgment call.
21 I could have added it; I didn't add it. I felt
22 that was an arrangement element.
23 Q But unlike the interlude, which you
24 just testified, this piece --
25 A This is related.

3 (Pages 106 to 109)

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1 S. Wilbur
 2 MS. STARK: Do you want more?
 3 BY MR. RIMOKH:
 4 Q So, but just to confirm, as you say
 5 on page six of your report, the musical structure
 6 is A, A1, B, A2?
 7 A Correct.
 8 Q Is that a common musical structure in
 9 music?
 10 A Very common.
 11 Q It's not original to "Wish Upon a
 12 Star", is it?
 13 A Hardly.
 14 Q Looking at page eight of your report,
 15 paragraph I, the second sentence says, "the B
 16 section has significant similarities as well. The
 17 first three notes of the B section of 'When You
 18 Wish Upon a Star' are D, E, G while the first
 19 three notes of 'I Need a Jew' are E, D, G."
 20 A I would like to strike that whole
 21 sentence, actually.
 22 Q So, you don't believe that it's a
 23 significant similarity, that sentence?
 24 A I think that the melodic contour is
 25 sufficiently different so that it would sound

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1 S. Wilbur
 2 different, yeah.
 3 Q Okay. So strike that opinion, okay.
 4 A Again, this, you know, as a vocal
 5 harmony line, just as I said in the other, would
 6 act as a harmony, potential vocal harmony part to
 7 the original song, "fate is kind."
 8 So, again, the device that was used
 9 to make a different melodic contour has been
 10 employed in this, but in any event --
 11 Q So, are you saying that the device
 12 was employed but it sounds different?
 13 A Yes. I think it, you know, I am
 14 prepared to take that out. Yeah.
 15 Q Okay. If you could, let's go to --
 16 once again, Exhibit 11, and taking a pen, please,
 17 going you through that exhibit, and those
 18 transcriptions, can you put a hash mark or a line
 19 where you believe there are similar, or -- excuse
 20 me, where the same pitches are used as you go
 21 along the song.
 22 A All the way through?
 23 Q Please, and please use a pen. That
 24 is going to be the official exhibit.
 25 A Okay.

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1 S. Wilbur
 2 MS. STARK: Is there a station near
 3 here?
 4 MR. RIMOKH: Yes.
 5 MS. STARK: Did you mark either of
 6 those DVD's?
 7 MR. RIMOKH: We can after.
 8 Q I'm sorry -- well --
 9 A Do you want me to mark all the notes
 10 that are the same?
 11 Q Right. In other words on top just
 12 put like a line.
 13 A I am doing it this way, is that what
 14 you want?
 15 Q Exactly.
 16 Is it possible for to you do it as
 17 you read along with the, like the top word?
 18 A Oh, sure, sure, sure.
 19 Q Just so I can follow.
 20 A "When you wish up-" are the same.
 21 Q Got it.
 22 A The next note is, in the last measure
 23 of the first line, middle note.
 24 Q I'm sorry.
 25 A You, "who you are," on the you, in

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1 S. Wilbur
 2 the upper line.
 3 Q Got it.
 4 A The next bar "any" is on E, so that
 5 is a C in bar five.
 6 Q So, you are saying that the "any" and
 7 the "wonders" are the same?
 8 A No. I am saying the "rus" and the E
 9 are the same, the second syllable of both of
 10 those.
 11 Q The "rus," I see it.
 12 A Okay.
 13 Q Okay.
 14 A Then the opening four notes again,
 15 A1, "if your heart is."
 16 Q All four notes?
 17 A All four notes.
 18 Q Okay.
 19 A "Extreme," it's the first syllable,
 20 ex. "When you," it's on you, in bar 13, okay.
 21 There is -- there is a C and a C on
 22 "Jew" and "do." They are not in the same
 23 register. I don't know if that counts.
 24 Q I'm sorry. Where are you?
 25 A In measure 16.

33 (Pages 126 to 129)

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1 S. Wilbur
2 Q Okay. Thanks.
3 A They are both Cs, one is lower and
4 one is higher. I put a line there.
5 "Kind" and "find." These, these
6 notes are parallel. There are many notes that
7 parallel to one another in the B section, but they
8 are not the same note.
9 So, it goes to measure 25, like a
10 bolt, all four of those notes.
11 Q Just so I am clear, we had "kind" and
12 "find" being the same, and now you are jumping to
13 "like a bolt"?
14 A "Kind" and "find" are the same, and
15 then we are jumping to "like a bolt" out.
16 Q Oh, again, that four note?
17 A Right. And the same notes would --
18 let me see, let me just see.
19 "You," in measure 28.
20 A different register, but the E, the
21 third through is, they are both E, different
22 register though.
23 Q So, over "through" and "ord"?
24 A No, in measure 28.
25 Q Yes.

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1 S. Wilbur
2 A G is the same note.
3 Q Got it.
4 A The "you."
5 Q Right.
6 A "Through," they are both singing in
7 E, but they are in different registers.
8 Q So, do you count it?
9 MS. STARK: It's the same note.
10 Q Again, if you count it, then you
11 count it.
12 A I'm counting it.
13 "Even," so on the second note in
14 measure 29, and when you on you is the same.
15 Then you go to "come" with the last
16 measure of that same line, and A in measure 32,
17 and "through" and "Jew" are the same notes.
18 Q I'm sorry. You lost me at "when you"
19 in 29. What was next?
20 A You -- and then after that you go to
21 measure 32, where "come." Okay?
22 Q Right.
23 A And the last note "true." So the
24 last two notes are the same.
25 Q Can you count up the number of

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1 S. Wilbur
2 identical or similar pitches?
3 MS. STARK: Are you saying identical
4 or similar?
5 MR. RIMOKH: What would the expert
6 say?
7 MS. STARK: What did you ask her to
8 do?
9 MR. RIMOKH: For the same pitch.
10 A Well, for the same pitch, then there
11 are two that I have indicated that are the same
12 note, but not the same pitch. They are in a
13 different register. I think I mentioned that.
14 And that -- so we can, we can count it or not
15 count it, but they are certainly related, but not
16 the same pitch.
17 Q Which were those?
18 A I will put a bracket around it. It
19 is in measure 16, "do" and "Jew" are the same
20 pitch, but different register.
21 Q Same pitch?
22 A Same pitch, different register.
23 MS. STARK: Can I just, I think that
24 you are, perhaps, because you are not a
25 musicologist, you are confusing pitch and

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1 S. Wilbur
2 notes.
3 MR. RIMOKH: I know the difference.
4 MS. STARK: So, can you please ask
5 her what she --
6 THE WITNESS: Yeah.
7 MS. STARK: -- ask her a specific
8 question, note, pitch, because you are
9 confusing me, and I don't know if it's
10 deliberate or if it's not deliberate. But I
11 want you to ask her whether it's the same
12 note or the same pitch, because those are
13 two different things.
14 MR. RIMOKH: Why on earth would it be
15 deliberate?
16 MS. STARK: I don't know, but I asked
17 you if you want her to mark the same note or
18 the same pitch.
19 MR. RIMOKH: I asked her the question
20 and she went through it. Clearly she
21 understood what I am talking about.
22 MS. STARK: She asked you --
23 MR. RIMOKH: She didn't ask me
24 anything.
25 THE WITNESS: I'm making a

! (Pages 130 to 133)

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1 S. Wilbur
2 differentiation between the same note but
3 not the same pitch.
4 MS. STARK: She asked you to twice,
5 do you want me to mark if it's the same
6 note, but in a different register, and you
7 are saying, well, what would you do. And
8 I'm asking you to tell her what you want her
9 to do. You are asking the questions.
10 MR. RIMOKH: I asked the question
11 that in her expert opinion would she
12 consider to it be the same.
13 MS. STARK: The same what?
14 Q Pitch.
15 A It's not the same pitch.
16 Q There you go.
17 Can you please count up for me the
18 number, what you have marked off?
19 A 21.
20 Q And how many of those 21 are the
21 first four notes being repeated?
22 A Twelve.
23 Q Or first four pitches being repeated?
24 MS. STARK: Objection to form. I
25 don't understand your question. The first

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1 S. Wilbur
2 four notes of what?
3 MR. RIMOKH: Of the both compositions
4 that she testified are the same. The "when
5 you wish up" and "nothing else has"?
6 A What are you asking me?
7 Q How many of the same --
8 A 21.
9 Q -- pitches that you marked off are --
10 or constitute that same four?
11 A Since it repeats three times,
12 obviously 12.
13 Q Okay. Okay. I would like you to
14 take a look at, again, Exhibit I, at your
15 transcription of "When You Wish Upon a Star," and
16 I am referring to the entire composition --
17 A Um-hum.
18 Q -- and in your opinion, which is the
19 more distinctive part of the melody, the melodic
20 rhythm or the sequence of pitches?
21 A The sequence of pitches for that
22 question.
23 Q Ms. Wilbur, do you currently plan on
24 doing any further work on this matter?
25 A I -- I don't know.

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1 S. Wilbur
2 Q Okay. Are you intending to do
3 another report, for example?
4 A If I am asked to do another report, I
5 will do another report.
6 Q Did you review Mr. Ferrara's report
7 before coming here today?
8 A Not today, no.
9 Q I didn't mean today, I mean --
10 A Yes.
11 Q -- prior to today, had you reviewed
12 Mr. Ferrara's report?
13 A Yes.
14 Q And what did you do to prepare for
15 this deposition?
16 A I read my report. I certainly
17 reviewed some of the things that Mr. Ferrara said,
18 in his deposition, and that's about it.
19 Q When you just said reviewed his
20 deposition, do you mean the transcript of his
21 deposition?
22 A No. I -- well, I did look at that,
23 but I didn't really spend a lot, a great deal.
24 MS. STARK: Stop.
25 THE WITNESS: Yes.

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1 S. Wilbur
2 Q Did you meet with counsel to prepare
3 for this?
4 A We did have a meeting, yes.
5 Q When was that?
6 A That was a while ago, because it was
7 supposed to happen last week, and I apologize for
8 getting sick.
9 Q Not a problem.
10 A So, it was during that week, I
11 believe.
12 Q And approximately how long did you
13 meet for?
14 A It wasn't just preparation for a
15 deposition. We had other conversations, so, it
16 was maybe three hours.
17 Q Other conversations?
18 A No. I mean, you know, we just went
19 through -- went through my report.
20 Q And who was at that meeting?
21 A Julie, paul Fakler came in at one
22 point, and chatted briefly.
23 Q Anyone else?
24 A No.
25 Q Did you discuss you're appearing for

35 (Pages 134 to 137)

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1 S. Wilbur
2 years.
3 Q Okay. But where would you draw the
4 line as to how much is necessary to evoke a song?
5 MS. STARK: Objection. Are you
6 talking about this song or any song?
7 MR. RIMOKH: In this instance.
8 A Since the average listener is the
9 criteria, I believe that the average listener
10 would not only recognize this song, but recognize
11 it right away within the first few seconds of the
12 song, and they would be brought back to it every
13 single time with all the similarities that I found
14 that that song would be very much in, in the mind
15 of the average listener throughout entire thing.
16 Q Okay. But -- and you testified
17 earlier that they could have just taken the first
18 four notes and then gone in a different direction;
19 is that true?
20 A They could have, sure.
21 Q And how would that have enabled them
22 to make fun of the song?
23 A I don't think they were making fun of
24 the song.
25 Q I am not asking that question. I'm

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1 S. Wilbur
2 asking if you take simply four notes of a song,
3 what is it that you are able to -- and then your
4 song goes off in a different direction, what is it
5 that you are able to say or reference about that
6 song?
7 A Whatever the joke is that you are
8 trying to impart, if there is a joke.
9 Q Is it your understanding that, under
10 a fair use parody defense, that taking more --
11 that taking enough of necessary to reference a
12 song is the maximum amount you are allowed to
13 take?
14 MS. STARK: Objection.
15 A I can't answer that question. I am
16 not a lawyer. It's a legal question.
17 Q Okay. So, when you use the phrase
18 "necessary to reference that song" in your report,
19 you are not referring to it in any sort of legal
20 sense?
21 A Absolutely not.
22 Q And you are not referring to it --
23 A I am referring to it from an average
24 listener's standpoint.
25 Q So, it's the average listener's

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1 S. Wilbur
2 ability to recognize that song?
3 A Right.
4 Q And you have no opinion as to whether
5 or not someone claiming parody is allowed to go
6 further and take more than that?
7 A It's a legal -- a legal question.
8 MR. RIMOKH: This time it's a
9 propeller instead of a jet.
10 PROFESSOR FARRERA: I am now by the
11 front door. It's loud, I'm sorry.
12 MS. STARK: We need to mute him at
13 this point.
14 MR. RIMOKH: Larry, we are hanging
15 up. Okay?
16 MS. STARK: Is he at the airport?
17 MR. RIMOKH: No. He's at a house
18 Florida. He's on vacation, which is why he
19 is not here.
20 MS. STARK: Of all the depositions to
21 videotape. Now we have some more sirens.
22 MR. RIMOKH: Okay. I have no further
23 questions.
24 Thank you very much for your time.
25 MS. STARK: We just have one small

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1 S. Wilbur
2 matter we want to clear up.
3 Can we just go off the record for one
4 second?
5 THE VIDEOGRAPHER: The time is
6 5:12 p.m. We are going off the record.
7 (Discussion held off the record.)
8 THE VIDEOGRAPHER: The time is
9 5:14 p.m. We are back on the record.
10 EXAMINATION
11 BY MS. STARK:
12 Q Ms. Ferrara, do you have anything
13 that you want to clarify on here?
14 MR. RIMOKH: That is the first thing
15 she wants to clarify.
16 MS. STARK: I'm sorry.
17 A The beach is appealing, but --
18 Q I apologize. It's been a -- the
19 company of sound in this deposition has frayed my
20 nerves.
21 Is there anything in your report is
22 that you would like to alter or clarify?
23 A On page eight, in J, just for
24 clarity, I wanted to add "occur after the last
25 word is sung in 'I Need a Jew'."

(Pages 146 to 149)

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1 S. Wilbur
 2 MR. RIMOKH: I'm sorry. Can you
 3 bring me there?
 4 MS. STARK: Sure, in paragraph J.
 5 MR. RIMOKH: Right.
 6 A "Harmonically, the pieces are also
 7 quite related. It has already been pointed out
 8 that the beginning and end of every four
 9 measures," that would have to be qualified as I
 10 qualified it earlier, "uses the basic chords.
 11 There are 58 chords in "When You Wish Upon a Star"
 12 and 65 chords, including the last four that occur
 13 after the last word is sung," in "I Need a Jew"
 14 would be added.
 15 I also qualified some of the things
 16 that I said earlier, but they are in the record,
 17 and I think that they would apply to every other
 18 instance in the report.
 19 MS. STARK: Okay. I have no further
 20 questions.
 21 MR. RIMOKH: I have nothing.
 22 MS. STARK: Okay. Thank you.
 23 THE VIDEOGRAPHER: The time is
 24 5:15 p.m., March 19, 2008, and we are off
 25 the record.

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1 S. Wilbur
 2 (Discussion held off the record.)
 3 MR. RIMOKH: Let's go back on the
 4 record.
 5 Just we are going back on the record
 6 just for a second just to mark the two DVD's
 7 that were played during the deposition.
 8 The first one is a DVD that states
 9 Walt Disney's Pinocchio. It states,
 10 "limited issue" on the top of it, but we
 11 have all agreed that that is the motion
 12 picture Pinocchio.
 13 And that will be Wilbur Exhibit 2.
 14 And as Wilbur Exhibit 3, we are going
 15 to mark a DVD which came from The Family Guy
 16 box set of season three, and it is disk
 17 three of season three, and it contains
 18 episodes 17 through 21, and it includes the
 19 episode "When You Wish Upon a Weinstein,"
 20 which was played during the deposition.
 21 (Wilbur Exhibit 2 and Wilbur Exhibit
 22 3 marked for identification as of this
 23 date.)
 24 I, SANDRA WILBUR, the witness herein, do
 25 hereby certify that the foregoing testimony of the

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1 S. Wilbur
 2 pages of this deposition to be a true and correct
 3 transcript, subject to the corrections, if any,
 4 shown on the attached page.
 5
 6 _____
 7 SANDRA WILBUR
 8 Subscribed and sworn to before me this
 9 day of _____, _____.
 10
 11 _____
 12 NOTARY PUBLIC
 13
 14
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1
 2 STATE OF NEW YORK) Pg. of Pgs.
 3 COUNTY OF NEW YORK)
 4 I wish to make the following changes
 5 for the following reasons:
 6 PAGE LINE
 7 _____ CHANGE: _____
 8 _____ REASON: _____
 9 _____ CHANGE: _____
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 22 _____ REASON: _____
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 24 _____ REASON: _____
 25

39 (Pages 150 to 153)

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1
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : SS.
5 COUNTY OF NEW YORK)
6

7 I, BONNIE PRUSZYNSKI, a Notary
8 Public with and for the State of New York,
9 do hereby certify:

0 That SANDRA WILBUR, the witness
1 whose deposition is hereinbefore set forth,
2 was duly sworn by me and that such deposition
3 is a true record of the testimony given by
4 the witness.

5 I further certify that I am not related
6 to any of the parties to this action by
7 blood or marriage, and that I am in no way
8 interested in the outcome of this matter.

9 IN WITNESS WHEREOF, I have hereunto
0 set my hand this 22ND of March, 2008.

1
2
3 _____
4 Bonnie Pruszyński
5

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7

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2 Wilbur 3* The Family Guy DVD 152
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4 (*Retained by defense counsel.)
5
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5

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